

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

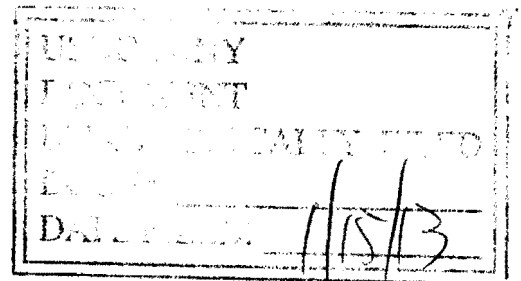
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JOHN WILCUTT,

Plaintiff,

-v-

ZIMMER, INC., ZIMMER HOLDINGS, INC.,
and ZIMMER ORTHOPAEDIC SURGICAL
PRODUCTS, INC.,

Defendants.
----- X



12 Civ. 4322 (JSR)

ORDER

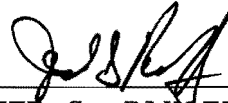
JED S. RAKOFF, U.S.D.J.

On December 27, 2012, the Court dismissed the above-captioned case for failure to prosecute and alternatively for failure to effect service. See Order of Dec. 27, 2012. However, the Court permitted counsel for the plaintiff to submit an affidavit showing good cause for his failure to effect service or otherwise prosecute this case. Upon receiving such an affidavit, and responses from defendants, the Court held another in-court hearing on January 14, 2013. After considering the parties' submissions and arguments, the Court, ruling from the bench, vacated that portion of its Order of December 27, 2012, that dismissed the case on grounds of abandonment but confirmed its dismissal of the complaint without prejudice for failure to timely serve.

At the hearing on January 14, 2013, plaintiff's counsel stated his intention to now effect service of a new complaint, while defendant's counsel indicated her belief that the new complaint (already filed in this Court but not yet served) is time-

barred. Once service of this complaint is effected, counsel for all parties are directed to convene a conference call with the Court to set a briefing schedule regarding defendants' motion to dismiss on grounds of statute of limitations.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
January 14, 2013